LIBRARY
SUPREME COURT, U.S.

DEC 8 1955
HAROLD B. WILLEY, Clerk

No. 530

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS, UAW-CIO,
*Appellant,*

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD AND KOHLER CO., a Wisconsin Corporation, *Appellees*

## BRIEF FOR THE AFL-CIO AS *AMICUS CURIAE* IN SUPPORT OF THE STATEMENT AS TO JURISDICTION AND IN OPPOSITION TO THE MOTIONS TO DISMISS

J. ALBERT WOLL
815 15th Street, N. W.
Washington, D. C.

ARTHUR J. GOLDBERG
DAVID E. FELLER
1001 Connecticut Ave., N. W.
Washington, D. C.

*Attorneys for American Federation of Labor and Congress of Industrial Organizations*

## TABLE OF CONTENTS



## AUTHORITIES CITED

**Cases:**



**Statutes:**



**Legislative Materials:**

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

No. 530

UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS, UAW-CIO,
*Appellant,*

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD AND KOHLER CO., a Wisconsin Corporation, *Appellees*

## BRIEF FOR THE AFL-CIO AS *AMICUS CURIAE* IN SUPPORT OF THE STATEMENT AS TO JURISDICTION AND IN OPPOSITION TO THE MOTIONS TO DISMISS

### INTRODUCTION

This brief amicus curiae is submitted by the American Federation of Labor and Congress of Industrial Organizations with the consent of the parties, as provided for in Rule 42 of the Rules of this Court. It is being submitted because of the importance of the issue here presented to all labor organizations which would be subjected to the cumulative and conflicting sanctions provided for by both federal and state labor relations laws if the decision below were permitted to stand.

## THIS CASE PRESENTS A SUBSTANTIAL FEDERAL QUESTION WHICH HAS PROBABLY BEEN DECIDED ERRONEOUSLY IN THE COURT BELOW

### I

### The Allen-Bradley Case

Factually, this case is substantially the same as *Allen-Bradley Local 1111* v. *Wisconsin Board*, 315 U. S. 740 (1942). Like *Allen-Bradley*, it is an action to enforce an order growing out of an unfair labor practice proceeding before the Wisconsin Employment Relations Board. The provisions of the Wisconsin labor relations statute on which the unfair labor practice order is based are the same as in *Allen-Bradley*. The nature of the union conduct claimed to violate the Wisconsin statute is substantially the same as in *Allen-Bradley*—i.e., coercive and violent action against employees to prevent them from working during a strike.

For these reasons, the Supreme Court of Wisconsin held, and the Wisconsin board here argues, that the federal preemption issue is the same as in *Allen-Bradley* and hence the appeal of the union should be dismissed.

There is one significant difference. *Allen-Bradley* was decided in 1942. The federal statute upon which the union's entire claim of conflict with state law here rests did not even exist then. It was not passed until 1947.

That is, of course, a considerable difference. When *Allen-Bradley* was decided, the Wagner Act was in effect. It prohibited certain employer unfair labor practices and provided a centralized administrative machinery for the protection of union and employee rights against such employer practices. There was no such thing as either federal substantive law or federal administrative procedure designed to control union unfair labor practices. Wisconsin's statute, on the other hand, while modelled on the federal act, regulated both employer and union unfair practices. The union did not argue in *Allen-Bradley* that Congress had

taken in hand the kind of union unfair labor practice there alleged. It argued, to the contrary, that the state's prohibition of union coercion might interfere with union activities protected by the Wagner Act.

This Court did not find the argument persuasive. It found that the nature of the state regulation was not such as to interfere with union activities protected by the federal statute and it concluded that *the absence of federal regulation* of union unfair labor practices (in 1942) left the states free to regulate them.

In 1947 the federal government enacted the Taft-Hartley Act. That Act not only, for the first time, laid down a substantive federal prohibition against union unfair labor practices. As was said in *Garner* v. *Teamsters Union;* 346 U. S. 485, 490, it also confided the "primary interpretation and application" of these new rules to the "specific and specially constituted tribunal" which had previously administered the rules against employer unfair practices. The "centralized administration of specially designed procedures" which this Court said in the *Garner* case "was necessary to obtain uniform application . . . and to avoid these diversities and conflicts likely to result from a variety of legal procedures and attitudes toward labor controversies" was made applicable to both employer and union activities. In particular, Section 7 was amended to state the right of employees to refrain from concerted activity as well as their right to engage in such activity. And a new Section 8(b)(1) was enacted which provided that it was an unfair labor practice for a union or its agents to restrain or coerce employees in the exercise of their Section 7 rights. Congress thus made subject to the centralized administrative procedures of the national board precisely the same kind of conduct which had previously been made subject, by §§111.06(2)(a) and (f) of the Wisconsin statute, to the administrative procedures of the state labor board.

The question now presented—and as yet not specifically

decided by this Court—is whether the enactment of Section 8(b)(1) prevents Wisconsin from enforcing, as to labor controversies subject to the federal statute, its own remedy for dealing with the identical labor relations problem.

*Allen-Bradley* did not decide that question. *Allen-Bradley* arose and was decided before the question even existed.

## II

### The Later Cases in This Court

This Court has, since the passage of the Taft-Hartley Act, continued to cite the *Allen-Bradley* case. These citations, both the Wisconsin Board and the Kohler Company argue, show that the passage of the Taft-Hartley Act did not change the holding of the Court in *Allen-Bradley* that Wisconsin's statute is valid.

Casual citation of a case decided under an earlier federal statute can never, we think, be regarded as a substitute for a decision by this Court that a new federal statute does not change the law. More importantly, however, the instances in which *Allen-Bradley* has been cited since 1947 are quite consistent with the contention of the union here that, in the light of the Taft-Hartley Act, Wisconsin's labor relations regulation cannot survive.

*Allen-Bradley* stands for the proposition that the states may continue to regulate aspects of union conduct which are not regulated by the Federal Act. There may remain truth in that proposition. But the proposition has no application when the aspect of union conduct which was regulated by Wisconsin in *Allen-Bradley* is subsequently regulated by federal statute. The passage of the Taft-Hartley Act may not have destroyed the general proposition of law upon which *Allen-Bradley* rested. It certainly made that proposition inapplicable.

*Allen-Bradley* has also been cited by this Court for another proposition—the right of the states to continue to exercise their "historic powers over such traditionally regu-

lated matters as public safety and order and the use of streets and highways." 315 U. S. 740, 749, quoted in *Garner* v. *Teamsters Union*, 346 U. S. 485, 488. This proposition, too, remains valid but also is inapplicable. As we said in our brief amicus curiae in *Weber* v. *Anheuser-Busch*, No. 97, October Term, 1954, 348 U. S. 468:

> "The federal statute does not . . . prevent the states from enforcing their traditional policies which do not involve a weighing of the social interests involved in labor relations matters even though those policies happen to be applied in a labor-management controversy.
>
> "Thus, the states may find liability for acts of violence and take appropriate police measures to prevent their recurrence, whether the violence occurs in connection with a strike, a political rally or in Joe's Bar. In such cases, the state is enforcing its policy against disturbances of the peace, not its policy relating to strikes, its policy relating to political matters, or its policy relating to the dispensing of alcoholic beverages. On the other hand, regulation which has as its basis a decision by the state that a particular kind of union activity should be restrained, or permitted only under certain conditions, is a matter of labor policy and cannot be enforced if the parties are subject to the federal act. Congress has pre-empted this field and closed it to state regulation."

Insofar as *Allen-Bradley* has been cited by this Court for the proposition that the states may exercise their traditional police powers to restrain breaches of the peace or other action which would violate state policy, whether or not that action occurs in connection with a labor controversy, it is good law. But that proposition does not control this case.

This is not a criminal prosecution under laws generally applicable to violence or breaches of the peace. It is not an action for damages which rests on general principles cut-

ting across labor relations laws. It is a case in which the State of Wisconsin, reserving its generally applicable police powers, has established a labor policy, pursuant to which it applies special remedies and invokes special procedures in cases in which coercive actions take place in a labor controversy.

The Wisconsin Employment Peace Act, as is plain on its face, does not express the state's general policy against violence or intimidation or breaches of the peace. Nor, contrary to the argument of the Kohler Company in its motion to dismiss, is it a general regulation of the streets and highways of the State of Wisconsin. The Wisconsin Employment Peace Act expresses the decision of the state as to the proper method of conducting strikes and other labor controversies, and provides administrative procedures, roughly comparable to those contained in the federal labor statute, by which the state's labor policy may be enforced. We think that the *Garner* case and the *Anheuser-Busch* case make it crystal clear that such state regulation must fail when applied to controversies over which Congress has assumed control.

This case is, indeed, almost precisely the same as the *Garner* case. All of the considerations present in the *Garner* case are present here. All of the arguments available to the employer in the *Garner* case are available here. And those arguments must fail here as they did in the *Garner* case.

There is but one difference. In *Garner* the union unfair labor practice, which the state also interdicted, arose under Section 8(b)(2) of the Taft-Hartley Act. Here the union activities claimed would violate Section 8(b)(1). Unlike 8(b)(2), actions which violate 8(b)(1) are actions which may in some cases also be punishable as violations of the state's general criminal law. That difference might very well be urged to support an application of the state's general criminal law against a claim of federal preemption. But the fact that this case involves matters which the police are

empowered to regulate generally, while it may serve to sustain an exercise of that police power, cannot serve to sustain the additional exercise of the state's labor relations policy.

## III

### The Algoma Case

The state board relies heavily, in its motion to dismiss, upon the decision of this Court in *Algoma Plywood Co. v. Wisconsin Board*, 336 U. S. 301 (1949). This reliance is obviously misplaced.

The Algoma case concerned the provisions of the Wisconsin Labor Relations statute regulating union shop agreements. The case arose before the passage of the Taft-Hartley Act, but was decided after its passage. The opinion, therefore, has two aspects.

The portions of the opinion particularly relied on by Wisconsin here dealt with the pre-1947 validity of the Wisconsin statute. They are clearly, therefore, irrelevant since the federal regulation of union security agreements only began in 1947. The portions of the opinion dealing with the post-1947 validity of the Wisconsin statute were controlled by the fact that Congress, in Section 14(b) of the Taft-Hartley Act, specifically provided for the continued enforceability of state statutes regulating union shop agreements. Wisconsin could impose more restrictive regulations upon union shop agreements than those imposed by the Taft-Hartley Act for the simple reason that Congress in Section 14(b) expressly said that the states could do so. The *Algoma* case is no authority whatsoever for post-1947 state regulation of union unfair labor practices as to which no such specific provision exists.

## IV

### The State's Police Powers

Wisconsin argues that the type of conduct here prohibited would have been within state jurisdiction if engaged in by

"unorganized private persons." Surely, Wisconsin says, "it was not intended by Congress to confer immunity on a single segment of the population." (P. 9.)

We agree.

But no one is claiming immunity here. No one argues in this case that it is not within the authority of local government to proscribe the type of conduct here involved under laws regulating all persons, including unions as well as "unorganized private persons." We are not aware that Wisconsin has made unions immune against the same laws relating to violence and breaches of the peace that apply to "unorganized private persons." Wisconsin can continue to apply those laws to unions and to "unorganized private persons" alike.[1] The question here is whether Wisconsin may impose additional restrictions and provide additional administrative remedies when unions and not "unorganized private persons" are involved in order to effectuate its own policy as to the kind of remedy and the kind of controls which should exist over labor disputes.

## V

### The Legislative History

An *amicus* brief on consideration of a jurisdictional statement is perhaps not the appropriate place for a lengthy examination of the legislative history of Section 8(b)(1). It is perhaps sufficient to say that the excerpts from that history referred to in the Kohler Company's motion to dismiss do, indeed, support the continued applicability of "State and local police laws"—as they are referred to by Senators Ives and Murray. They do *not* support the continued validity of state labor relations procedures. Careful examination of the Senate debates upon which Kohler principally relies makes it quite clear that Senator Taft, in referring to "the

---

[1] Indeed, §111.07(1) of the Wisconsin statute clearly says that "nothing herein shall prevent the pursuit of legal or equitable relief in courts of competent jurisdiction." 20 LRRM 3163.

law of the state" and Senator Ball, in referring to "good local law enforcement," intended to refer to the generally uniform state criminal laws covering all cases of physical violence, not to the administrative procedures of state labor relations statutes.

The debate in the Senate over Section 8(b)(1) revolved principally around the objections of the opposing senators to any specific singling out of labor coercion for additional administrative handling when all violence, whether or not in conjunction with a labor dispute, was already subject to state criminal penalties. The proponents of Section 8(b)(1) argued—as the excerpts quoted by Kohler show—that the peace officers charged with enforcing such generally applicable criminal laws would be encouraged by the addition of a Federal administrative procedure dealing, in part, with the same ground. Neither the opponents nor the proponents of Section 8(b)(1) assumed that state labor relations procedures *and* federal labor relations procedures would be super-imposed on the existing criminal law.

This is shown most clearly in the very speech by Senator Ives quoted by Kohler. Following the portion quoted, in which the Senator said that Section 8(b)(1) would make unions liable twice for the same offense, he went on to point out that the existing state law remedies were more than adequate since the "effective remedy against such offenses is quick arrest, criminal trial, and conviction, not an administrative hearing . . ." (93 Cong. Rec. 4019, 2 Legislative History of the Labor-Management Relations Act, 1947, 1021). Senator Taft answered Ives' speech by pointing out that Wisconsin, in the very statute here in issue, had superimposed an administrative procedure upon the existing criminal law. "Of course," he said, while referring to the Wisconsin statute, "if administrative law fails, it would be necessary finally to resort to the police powers of the states." (93 Cong. Rec. 4028, 2 Leg. History 1032). He thus made clear what all assumed—that the repeated reference to existing state law

and the police powers of the states, which would be duplicated by Section 8(b)(1), were references to the general state criminal law against violence and coercion, not to state labor relations statutes.

We believe that the legislative history of the Federal Act, when considered as a whole, supports the claim of Federal preemption made here. But, whether we are right on this or not, the history certainly is not so clear against the claim as to warrant dismissal of the appeal.

## VI

### The Federal-State Conflict in This Case

This very case demonstrates the confusion and potential undermining of the Congressional enactment which follows from state enforcement of its own labor relations policy in a controversy which is also subject to the federal law. In this case the same strike has given rise to two unfair labor practice proceedings—one under the federal act and one under the Wisconsin act—in which the same issues are being litigated.

There is no question that the dispute out of which this proceeding arises is subject to the federal act. Indeed, unfair labor practice proceedings under the federal act, arising from earlier events, were pending against the Kohler Company when the present strike began. They were decided by the federal board on April 12, 1954. The board's order in that proceeding has subsequently been enforced in the federal courts. *N.L.R.B.* v. *Kohler Co.*, 220 F. 2d 3 (C. A. 7, March 7, 1955).

The very conduct here involved is also currently the subject of a National Labor Relations Board proceeding. The strike began on April 5, 1954. On April 15, the Kohler Compan, filed its complaint with the Wisconsin Employment Relations Board. That proceeding resulted in the order which is under attack in this case. Meanwhile, the Union, on July 8, 1954, filed charges with the National La-

bor Relations Board that the company had failed to bargain collectively and had discriminatorily discharged certain employees. After investigation, a complaint was issued against the company by the General Counsel of the federal board. The company answered and the matter went to hearing in February, 1955. The hearings have, as of the date of this writing, not been concluded. *Matter of Kohler Co.*, N.L.R.B. Case No. 13-CA-1780.

The fact that both the federal and state labor relations board are seeking to exercise jurisdiction over the same controversy is, we think, significant enough. But even more significant is the fact that the identical issues are being litigated before both tribunals.

One of the contentions of the union and the General Counsel of the National Labor Relations Board in the federal proceeding is that the Kohler Company has refused to bargain in good faith with the union. The company, answering this contention, claims that the union, by engaging in the same course of action complained of in the Wisconsin proceeding, has itself failed to bargain in good faith and that this failure excuses the company.

The company's contention in the federal proceeding is set forth clearly in the answer which it filed with the National Labor Relations Board in December, 1954, which states, in part, as follows:

> "[Respondent] further alleges that the Union was not bargaining in good faith in that beginning April 5, 1954, and continuing to date it engaged in, supported, urged and fostered coercive and illegal conduct, including interfering by force, threat, intimidation and mass pickets with persons desiring to pursue lawful work and employment for the respondent, attempting by such means to prevent lawful work or employment by persons desiring to work for the respondent; obstructing and interfering by mass pickets and by physical obstruction with the free and lawful use of public

streets, and with the free and lawful use of entrances to and driveways leading to the plant of respondent, threatening them with physical injury, picketing their homes, following and intimidating them on foot and in vehicles, subjecting them to harassing telephone calls, causing injury and damage to their homes and other property and to their persons, and by similar act and conduct all with the intent to force respondent to capitulate to the Union's demand as the price of securing discontinuance of said coercive and illegal conduct and accompanied by repeated statement by representatives of the Union that respondent could obtain relief from said illegal and coercive conduct by signing a contract satisfactory to the Union."

The Company has thus itself illustrated what is in any case plain: the federal act is an integrated whole. One cannot separate out parts of the conduct of one of the parties to a labor dispute and deal with it separately without destroying the scheme which Congress has established for the regulation of such disputes.

Picket lines are not conducted in a vacuum. Nor does bargaining take place without reference to what has happened on the picket line. Each act in a complex labor dispute is necessarily related to what has gone before and provides the basis for what will happen later. No particular aspect of the dispute can properly be seen when isolated from the whole dispute—either as a matter of life or as a matter of law.

The federal Act recognizes these interrelationships. Thus, the fact that an employer has engaged in unfair labor practices such as a refusal to bargain may, under the federal law, give reinstatement rights to employees who have engaged in coercive picket line conduct which would otherwise disqualify them. *N.L.R.B.* v. *Thayer Co.*, 213 F. 2d 748 (C. A. 1, 1954) *cert. denied* 348 U. S. 883. And, on the other

hand, the fact that violence has occurred on the picket line may, the Company is contending before the federal board, excuse it from the duty to bargain which it would otherwise have.

All of these issues are necessarily interrelated. Congress has enacted a statute under which the entire controversy can be taken in hand, under which both parties can obtain adjudication before a single body of their claims of unfair action, each against the other, and under which the whole pattern of conduct of both sides can be evaluated.

Wisconsin, it is true, has also enacted such a statute. Under the Wisconsin statute it is an unfair labor practice for an employer to refuse to bargain in good faith or to discriminatorily discharge employees for engaging in concerted activities. Were it not for the federal Act, the Wisconsin Board could take hold of the whole controversy. But the decided cases make it clear that the Wisconsin board cannot do so. *Plankinton Packing Co.* v. *Wisconsin Board,* 338 U. S. 953; *Garner* v. *Teamsters Union,* 346 U. S. 485. Even if appellees are correct in their contentions, only the single issue of union coercion can be decided by the Wisconsin board. The other issues in the dispute, their relationship to the claimed coercion, and indeed the factual redetermination of the coercion issue itself are all subject to adjudication in the proceeding before the National Labor Relations Board.

The question here, then, is whether Wisconsin may continue to enforce its own labor policy with respect to the single issue of union coercion, in splendid isolation from the other issues, even though: (1) that policy duplicates the federal policy, (2) the issue of coercion is integrally interrelated with other issues arising out of the same dispute which only the federal board can decide and (3) the coercion issue is itself subject to different determination in the procedure Congress has provided for the whole dispute. We think it plain that this kind of one-sided and truncated

adjudication should not be permitted to stand in the face of the federal Act.

## CONCLUSION

For the reasons above set forth, it is respectfully submitted that this Court should note probable jurisdiction.

Respectfully submitted,

J. ALBERT WOLL
815 15th Street, N. W.
Washington, D. C.

ARTHUR J. GOLDBERG
DAVID E. FELLER
1001 Connecticut Ave., N. W.
Washington, D. C.

*Attorneys for American Federation of Labor and Congress of Industrial Organizations*